

1886
IN RE J. W.
FOX.

THIS was an application that an order, *nisi*, dated the 13th January 1886, directing the final discharge of the insolvent, might be made absolute, notwithstanding the fact that the insolvent was not himself present before the Court.

The insolvent had, on the 13th January 1886, obtained a rule *nisi* directing his final discharge, and fixing the further hearing of the matter for the 3rd March.

On that day no creditor appeared to oppose the rule, nor was the insolvent personally present in Court; he, however, appeared through his Attorney, who asked for the insolvent's final discharge, and placed before the Court an affidavit sworn on the 2nd March by the insolvent from which it appeared that the insolvent was the Commander of the S. S. "Indore" trading between Calcutta and Assam; that he had arrived in the port of Calcutta on the 28th February; that in the ordinary course of his employment he had been ordered to leave Calcutta on the morning of the 3rd March 1886, bound on a voyage to Assam in command of the said steamer, and would be unable, therefore, to appear before the Court in the forenoon of that day at the hearing of the matter of his petition and application to make absolute the order *nisi*, dated the 13th January 1886.

Mr. Orr appeared for the Insolvent.

NORRIS, J.—I have consulted Mr. Justice Pigot and Mr. Justice Trevelyan, and they both agree with me in thinking that the affidavit is sufficient in this case to enable me to make the rule absolute. The affidavit states sufficient reasons for the absence of the insolvent; and there is no opposition; if any one had appeared to oppose I should not have made the order.

Rule absolute.

Attorneys for insolvent: Messrs. Barrow & Orr.

T. A. P.

Before Mr. Justice Norris.

1886
May 5.

IN RE NOBODEEP CHUNDER SHAW, AN INSOLVENT.

Insolvency—Infant—Minor—Trading contract—Insolvent Act (11 & 12 Vict.) c. 21.

A minor who has traded cannot be adjudicated an insolvent on the petition of the persons who have supplied him with funds for the purposes of his business.

THIS was a rule calling upon certain adjudicating creditors to show cause why an order, dated the 4th March 1886, adjudicating one Nobodeep Chunder Shaw, an insolvent, should not be set aside.

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It appeared that on the 4th March 1886, Bhuggoban Chunder Roy and Bhoyrub Chunder Roy had obtained an order adjudicating Nobodeep Chunder an insolvent, alleging that he had for about 2½ years personally conducted and carried on the business of a dealer in jute holding himself out as an adult and trading as such, and alleging that he had contracted with them debts which remained unpaid, and was indebted to them in an aggregate sum of Rs. 17,000, for which sum two High Court decrees had been obtained.

On the 29th March 1886, Nobodeep Chunder obtained a rule calling on the adjudicating creditors to show cause why the order should not be set aside, stating in the petition on which the rule was obtained that at the time the debts mentioned by the adjudicating creditors were contracted, he was a minor, and therefore not a trader within the meaning of the Act for the Relief of Insolvent Debtors, and that on the 9th April 1884 he had himself filed his petition in insolvency, the present adjudicating creditors opposing; that the application was dismissed on the ground that he was an infant at the time of the filing of his petition; he further denied that he had ever held himself out as an adult, stating on the contrary that the adjudicating creditors knew, and had every means of knowing, that he was an infant, and that with full knowledge of his minority they had lent money to him; that the decrees obtained against him by the adjudicating creditors were null and void, they having been passed against him *ex parte* when he was an infant, no guardian of suit having been assigned to him, and the services of summons having been improperly served.

Mr. T. A. Apcar showed cause. The infant held himself out to us as an adult, and therefore can be adjudicated an insolvent—see *Ex parte Jones* (1), and *Ex parte Watson* (2); see s. 11 of Act IX of 1872 as to the power of a minor to contract.

Mr. Pugh and Mr. Allen, *contra*, were not called upon.

(1) L. R., 18 Ch. D., 109.

(2) 16 Ves., 265.

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IN RE
NOBODERP
CHUNDER
SHAW.

NORRIS, J.—I do not think it necessary that I should take time to consider what judgment I should give in this case, or encumber the record with an elaborate investigation of the older authorities in a case where the question is set at rest by the decision of the Appeal Court in *Ex parte Jones* (1), the principle of which was adopted in the Court of Appeal in Ireland in the case of *In re Rainys* (2). It seems to me that the provisions of the Contract Act are much stronger than the Infants Relief Act, a provision which formed the basis of the decision in *Ex parte Jones*. I therefore think this adjudication should be set aside.

Rule absolute.

Attorney for petitioner: Baboo G. C. Chunder.

Attorneys for adjudicating creditors, Messrs. Sen & Co.

T. A. P.

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice O'Kinealy.

ABOOL HOSSEIN (PLAINTIFF) v. RAGHU NATH SAHU (DEFENDANT.)*

1886.
March 30.

Registration—Notice—Mortgagor and Mortgagees—Unregistered mortgage—Purchaser with notice of prior unregistered mortgage—Priority.

Where property has been mortgaged by a deed, the registration of which is not compulsory, a subsequent purchaser of the property, who has duly registered his purchase deed, but who has bought with notice of the unregistered mortgage, takes the property subject to that mortgage.

THIS was a suit instituted on the 7th February 1884 to recover the sum of Rs. 86-15-0, being Rs. 50 principal and Rs. 36-15-0 interest due on a mortgage bond executed by the defendant Raghu Nath Sahu, on the 12th of December 1877. The bond had not been registered. It appeared that Raghu Nath Sahu had, on the 29th of January 1884, sold the mortgaged property by a registered deed of sale to one Mahadeo, who was made a defendant on the 18th of April 1884.

* Appeal from Appellate Decree No. 1990 of 1885, against the decree of Baboo Ram Pershad, Subordinate Judge of Patna, dated the 30th of June 1885, affirming the decree of Moulvi Abdul Bari, Khan Bahadur, Munsiff of Patna, dated the 23rd of February 1885.

(1) L. R., 18 Ch. D., 109.

(2) 3 Ir. L. Rep. Ch. 459.